

## RULE 1203

### Federal Operating Permits

#### (A) Permit Term.

- (1) A Federal Operating Permit shall be valid for five (5) years unless it is revoked or suspended by the APCO or the District Hearing Board. The expiration date shall be clearly indicated on the permit.

#### (B) Permit Issuance.

- (1) Federal Operating Permits, Significant Modifications to Federal Operating Permits and Renewals of Federal Operating Permits shall be issued using the following procedure:
  - (a) Preliminary Determination.
    - (i) Prior to the final determination the APCO shall issue a preliminary determination which includes: a copy of the proposed permit, if any, and a statement of the legal and factual basis for the terms of the proposed permit or the basis for the denial of the permit.
  - (b) Notice and Comment Period.
    - (i) Prior to the final determination, but after any preliminary determination, the APCO shall: initiate public notice and comment pursuant to District Rule 1207(A) and initiate Affected State(s)' notice and comment pursuant to District Rule 1207(B).
    - (ii) Prior to the final determination, but after the initiation of the notice and comment period, the APCO shall, if necessary, hold a properly noticed public hearing on the proposed permit pursuant to District Rule 1207(A)(4) and 1207(C).
  - (c) Revisions and Submission to USEPA.
    - (i) Prior to the final determination, but after the initiation of the notice and comment period, the APCO shall make any revisions or modifications to the proposed permit and statement which are necessary.

- (ii) The APCO shall thereafter submit copies of the application, any supplemental information, the proposed permit, with revisions if any, and the Statement of Legal and Factual basis to the USEPA for review.
  - (iii) Upon receipt of comments from the USEPA, the APCO shall make any necessary revisions and resubmit the proposed permit to USEPA within 90 days of receipt of the comments.
- (d) Date of Final Determination.
- (i) Initial Permit for Facilities Operating Prior to Effective Date.
    - a. For Facilities existing and operating prior to the effective date of this regulation and for which timely and complete applications pursuant to District Rule 1202(B)(3) have been received by the District, the APCO shall make a final determination to issue or deny the Federal Operating Permit, at the latest, three (3) years from the effective date.
    - b. At a minimum, the District shall issue Federal Operating Permits for one-third (1/3) of all the timely applications received in each of the three years following the effective date.
  - (ii) Facilities Commencing Operations After the Effective Date and Renewals of Federal Operating Permits.
    - a. For Facilities commencing operations after the Effective Date and for any Renewals of Federal Operating Permits the APCO shall make a final determination to issue or deny the Federal Operating Permit within eighteen (18) months after the date the timely and complete application was received by the District.
  - (iii) Applications Containing Hazardous Air Pollutant Early Reduction.
    - a. For Facilities which have submitted a timely application which contains an early reduction demonstration for any Hazardous Air Pollutant pursuant to 42 U.S.C. §7412(i)(5), (Federal Clean Air Act §112(i)(5)), the APCO shall make a final determination to issue or deny a Federal Operating Permit within nine (9) months after the date the timely and complete application was received by the District.
  - (iv) Applications for Acid Rain Provisions of a Federal Operating Permit.
    - a. The APCO shall make a final determination to issue or deny a Federal Operating Permit or the Acid Rain provisions of a Federal Operating Permit pursuant to District Rule 1210.

- (v) Applications for Significant Permit Modifications.
  - a. For Facilities which have submitted a timely and complete application for a Significant Permit Modification, the APCO shall attempt to make a final determination on a majority of such applications within nine (9) months after the date the timely and complete application was received by the District. The APCO shall, at the latest, make a final determination on such applications within eighteen (18) months after the date the timely and complete application was received by the District.
- (vi) Reopened Permits.
  - a. For Facilities holding Federal Operating Permit which have been reopened due to the promulgation of a new regulation pursuant to the provisions of District Rule 1206(A)(1)(a) the APCO shall make a final determination within eighteen (18) months after the promulgation date of the new regulation.
  - b. For Facilities holding a Federal Operating Permit which has been reopened pursuant to the provisions of District Rule 1206(A)(1)(b-c) the APCO shall make a final determination within eighteen (18) months after the date noticed for the reopening of the Federal Operating Permit.
- (e) Permit Issuance.
  - (i) After final determination the APCO shall issue the permit and shall provide copies to the applicant and USEPA.

**(C) Restriction on Permit Issuance.**

- (1) No Federal Operating Permit shall be issued as a result of the default by the District of any requirement contained in this Regulation. No Federal Operating Permit shall be issued unless the following conditions are met:
  - (a) A complete application has been submitted pursuant to the provisions of District Rule 1202.
  - (b) The notice and comment procedures pursuant to the provisions of District Rule 1207 have been complied with.
  - (c) The permit contains the required contents as set forth in District Rule 1203(D).

- (d) The USEPA has not objected to the proposed permit within 45 days of its submittal to USEPA for review.

(D) Permit Contents.

- (1) All Federal Operating Permits shall contain, at a minimum, the following terms and conditions:
  - (a) Identification of Applicable Requirements as follows:
    - (i) For a Major Facility, all Applicable Requirements for all relevant permit units, non-permitted equipment and fugitive emissions within the Major Facility.
    - (ii) For any Facility which is not a Major Facility but is subject to the provisions of Regulation XII, all applicable requirements for any permit unit, non-permitted equipment or fugitive emissions which cause the Facility to be subject to the provisions of Regulation XII.
  - (b) Emissions limitations and/or standards, including operational limitations, which assure compliance with all Applicable Requirements and a reference to the origin and authority of each term or condition contained in the Federal Operating Permit.
  - (c) Monitoring requirements including but not limited to:
    - (i) All emissions monitoring and analysis methods required by an Applicable Requirement.
    - (ii) Periodic monitoring, testing or record keeping (including test methods sufficient to yield reliable data) to determine compliance with an Applicable Requirement that does not directly require such monitoring.
    - (iii) Necessary requirements concerning use and maintenance of equipment including the installation and maintenance of monitoring equipment.
  - (d) Record keeping requirements, where applicable, including but not limited to:
    - (i) Records of required monitoring information including dates and times of sampling, operating conditions at the time of sampling, date of analysis, analytical techniques and methods, the person or company performing the analysis, and the results of the analysis.
    - (ii) The retention of all records for a period of at least five (5) years from the date of monitoring.

- (e) Reporting requirements, where applicable, including but not limited to:
  - (i) Submittal of any required monitoring reports including but not limited to identification of all instances of deviation from requirements of the Federal Operating Permit, at least every six (6) months.
  - (ii) Prompt reporting of all deviations from permit requirements including those attributable to breakdown conditions. Prompt and adequate reporting shall be determined in compliance with District Rule 430.
- (f) Various Standardized Provisions and/or Conditions.
  - (i) A severability clause.
  - (ii) A provision which states that the permit holder shall comply with all conditions of the Federal Operating Permit. Any noncompliance constitutes a violation of the Federal Clean Air Act and is grounds for enforcement action; the termination, revocation and reissuance, or modification of the Federal Operating Permit; and/or grounds for denial of a renewal application.
  - (iii) A provision which states that the need to halt or reduce activity to maintain compliance with the provisions of the Federal Operating Permit, or for any other reason, is not a defense in an enforcement action.
  - (iv) A provisions which states that the Federal Operating Permit may be modified, revoked, reopened, reissued or terminated for cause.
  - (v) A provision which states that the filing of an application for modification; a request for revocation and reissuance, or termination; or notifications of planned changes, or anticipated noncompliance does not stay any condition of the Federal Operating Permit.
  - (vi) A provision which states that the permit does not convey any property rights of any sort, or any exclusive privilege.
  - (vii) A provision which states that the Permit holder shall furnish to the District, within a reasonable time as specified by the District, any information that the District may request in writing to determine whether cause exists for modifying, revoking and reissuing, terminating or determining compliance with the Federal Operating Permit.
  - (viii) A provision which states that the Permit holder shall, upon request, furnish to the District copies of records required to be kept pursuant to conditions of the Federal Operating Permit.
  - (ix) A provision requiring the payment of annual permit renewal fees and other applicable fees as prescribed in District Rule 312.

- (x) A provision stating that no permit revision shall be required under any approved economic incentives, marketable permits, emissions trading or other similar programs provided for in the permit.
- (xi) Terms and conditions, if applicable, for reasonably anticipated operating scenarios identified by the Facility in its application which require the Facility, contemporaneously with making the change from one operating scenario to another, to record in a log at the Facility a record of the scenario under which it is operating; and ensure that each alternative operating scenario meets all Applicable Requirements.
- (xii) Terms and conditions, if requested by the applicant, for the trading of emissions increases and decreases within the Facility to the extent any Applicable Requirements allow for such trading without case-by-case approval. Such terms conditions shall include all terms and conditions to determine compliance with all Applicable Requirements; and meet all Applicable Requirements.

(g) Compliance Conditions.

- (i) Inspection and entry requirements which require that the Permit Holder allow an authorized representative of the District to enter upon the Permit holder's premises, at reasonable times.
- (ii) Provisions which allow an authorized representative of the District to have access to and copy any records that must be kept under conditions of the Federal Operating Permit.
- (iii) Provisions which allow an authorized representative of the District to inspect any Permit Unit, equipment, practice, or operation regulated or required under the Federal Operating Permit.
- (iv) Provisions which allow an authorized representative of the District to sample or monitor substances or parameters for the purpose of assuring compliance with the Federal Operating Permits or with any Applicable Requirement.
- (v) A Compliance Plan.
- (vi) A restatement, if applicable, of the requirement that the Permit holder submit progress reports at least semiannually pursuant to a schedule of compliance. Such progress reports shall comply with the provisions of District Rule 1201(I)(3)(iii).
- (vii) Certification requirements including the frequency of submission, not less than annually, for Compliance Certifications.
- (viii) Requirements that methods for monitoring compliance be included in the Compliance Certifications.
- (ix) Requirements that all Compliance Certifications be contemporaneously submitted to USEPA.

(x) Any additional certification requirements as specified in 42 U.S.C. §7414(a)(3), Recordkeeping Inspections Monitoring and Entry (Federal Clean Air Act §114(a)(3)) and 42 U.S.C. §7661c(b), Permit Requirements and Conditions (Federal Clean Air Act §503(b)) or in regulations promulgated thereunder.

(h) Fugitive Emissions.

(i) Fugitive emissions shall be included in the permit and permit conditions in the same manner as stack emissions.

(E) Operational Flexibility.

(1) Upon the request of the permit holder the APCO shall allow certain changes in operations under a Federal Operating Permit without modification of the permit. Such changes shall not be allowed if such change constitutes a modification under any provision of Title I of the Federal Clean Air Act (42 U.S.C. §§7401-7515) or exceeds the emissions currently allowed under the permit.

(a) Alternate Operating Scenarios.

(i) The APCO shall allow changes between Alternate Operating Scenarios which have been:

- a. Identified in the permit application; and
- b. Approved by the APCO; and
- c. Incorporated in the Federal Operating Permit; and
- d. Shown to be in compliance with all other Federal, State and Local requirements including any Applicable Requirement; and
- e. Required, by condition contained in the Federal Operating Permit, to have a contemporaneous log of changes between each alternative operating scenario.

(b) Emissions Trading Under a Facility Emissions Limit.

(i) The APCO shall allow a Facility to participate in trading under a voluntary facility-wide emissions limit if:

- a. The applicant requests a voluntary facility-wide emissions limit in its permit application; and
- b. The facility-wide emissions limit is independent of any otherwise Applicable Requirements; and

- c. The facility-wide emissions limit and the terms and conditions for emissions trading under that limit are approved as enforceable and quantifiable by the APCO and included in the Federal Operating Permit; and
- d. The facility-wide emissions limit is included in the Federal Operating Permit; and
- e. The facility-wide emissions limit is shown to be in compliance with all other Federal, state and local requirements including any Applicable Requirement; and
- f. A condition is included in the Federal Operating Permit requiring written notice of the emissions trade by a Responsible Official to be provided to the APCO and USEPA thirty (30) days prior to the effective date of the trade. Such notice shall identify the permit unit(s) involved in the trade; the date of the trade; the duration of the trade; any change in emissions of any Air Pollutant, including new emissions, which will occur as a result of the trade; and how the changes in emissions will comply with the terms and conditions of the Federal Operating Permit.

(c) Changes not Expressly Allowed by the Federal Operating Permit.

- (i) The APCO shall allow a change not expressly allowed by the Federal Operating permit if:
  - a. Written notice of the change is provided to the APCO and USEPA at least 30 days prior to the implementation date of the change; and
  - b. The written notice shall identify the permit unit(s) involved in the change; the date of the change; the duration of the change; any change in emissions of any Air Pollutant, including new emissions, which will occur as a result of the change; and any Applicable Requirement that would apply as a result of the change; and
  - c. The change will not violate any Federal, State or Local requirement, including any Applicable Requirement, and the notice required under section (E)(1)(c)(i)(b) above indicates which term or condition contained in the Federal Operating Permit is no longer applicable; and
  - d. The proposed change is not subject to any requirement under Title IV of the Federal Clean Air Act (42 U.S.C. §§7651-7651o) and is not a modification under Title I of the Federal Clean Air Act (42 U.S.C. 7401-7515) and is not a modification subject to the provisions of District Regulation XIII; and

- e. The change does not result in the exceedance of the emissions allowable under the permit, whether expressed therein as a rate of emissions or in terms of total emissions; and
- f. The holder of the Federal Operating Permit shall keep a record describing changes made at the Facility and the emissions, if any, resulting from the changes; and
- g. The APCO has not disapproved the change within the thirty (30) days prior to the proposed date of change.

(F) Compliance Certification.

- (1) Each holder of a Federal Operating Permit shall submit a Compliance Certification annually within thirty (30) days of the anniversary of the date of the issuance or renewal of the Federal Operating Permit. Such Compliance Certification shall comply with the provision of District Rule 1208.

(G) Permit Shield.

- (1) Compliance with the conditions contained in the Federal Operating Permit shall be deemed compliance with an Applicable Requirement as of the date of permit issuance if:
  - (a) The Applicable Requirement involved is specifically identified in the Federal Operating Permit.
  - (b) A specific statement applying the permit shield is included in the Federal Operating Permit.
- (2) The permit shield may be extended to Applicable Requirements which are not applicable to the Facility if such Applicable Requirements are identified and the reasons for the nonapplicability are concisely summarized in the Federal Operating Permit.
- (3) Notwithstanding any other provision of this subpart, the permit shield shall not:
  - (a) Limit the emergency powers of USEPA as set forth in 42 U.S.C. §7603 (Federal Clean Air Act §303).
  - (b) Limit liability for violations which occurred prior to or which were ongoing at the time of the issuance of the Federal Operating Permit.
  - (c) Alter any Applicable Requirement contained in the Acid Rain Program.

- (d) Limit the ability of the USEPA or the District to obtain information under 42 U.S.C. §7414, Recordkeeping, Inspection, Monitoring and Entry Requirements (Federal Clean Air Act §114).
- (e) Apply to emissions trading pursuant to provisions contained in the applicable State Implementation Plan.
- (f) Apply to changes made pursuant to the provisions of Rule 1203(E)(1)(c).
- (g) Apply to changes made pursuant to the provisions of Rule 1205(A) through (C) inclusive prior to such changes being included in the Federal Operating Permit.

(H) Violation of Permit Conditions.

- (1) A violation of any permit condition imposed pursuant to this Regulation shall be deemed a violation of this Regulation.

[Program Approval: Amendments of 6/25/01 submitted on \_\_\_\_; Interim Approval 2/5/96, 61 FR 4217]